IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CWP No.6458 of 2007
Date of decision: 9.7.2007

Dr. Balwinder Singh & Ors.

-----Petitioners

Vs.

State of Punjab & Ors.

-----Respondents

CORAM:- HON'BLE MR JUSTICE ADARSH KUMAR GOEL
HON'BLE MR JUSTICE AJAI LAMBA

Present: Mr. G.S. Sandhawalia, Advocate
for the petitioners.

Mr. Anil Kumar Sharma, Sr. DAG, Punjab.
for respondents No.1 to 3.

Mr. T.S. Dhindsa, Advocate
for respondent No.4.

ORDER:

This petition seeks a direction, for consideration of the petitioners for admission to M.D./M.S. degree course in pursuance of Post Graduate Entrance Test, 2007.

Case of the petitioners is that vide notification dated 21.3.2007 (Annexure P-1), admissions to the Post Graduate Degree/Diploma Courses for the year 2007 in the Health Science Educational Institutions (Medical and Dental) in the State of Punjab are to take place. The petitioners are in-service SC/BC candidates. Their

grievance is that 60% in-service quota seats could not be transferred to 40% quota for non-service candidates.

It has been pointed out that 50% marks are required to be obtained by general candidates while 40% marks are required to be obtained for SC/BC candidates. Only three candidates got 50% marks in general category of in-service candidates and six candidates belonging to SC category and one from BC, qualified the test out of the in-service candidates. Respondent No.4 informed the petitioners orally that vacant seats of in-service candidates belonging to general category/physically handicapped/freedom-fighters would go to 40% quota.

The petitioners represented that vacant seats in 60% quota could not be given to candidates other than in service candidates.

On notice being issued, learned counsel for respondent No.4-University has put in appearance and stated that the matter being legal, he does not wish to file any reply.

We have heard learned counsel for the parties and perused the record.

Since question is of interpretation of notification dated 21.3.2007 (Annexure P-1), it will be necessary to extract the relevant part thereof, which reads as under:-

> "14. In the Government institutions, 50% of the total seats of every such institution shall be filled by the Government of India on All India basis through an All India Competitive Entrance Test. The remaining seats shall be filled through the Post Graduate Entrance Test, 2007 (PGET-2007). Out of the remaining seats, 60% seats shall be filled up from

amongst the eligible PCMS/PCMS (Dental/PDES in service doctors and 40% shall be open to all eligible medical/dental graduates.

a) For 60% Seats (In service PCMS/PCMS (Dental)/ PDES).

xxx xxx xxx

b) For 40% setas:

xxx xxx xxx

c) Conditions which apply to Both 60% (PCMS) and 40% (Open) category:

i. After filling up seats under 60% quota, including candidates against de-reserved seats in case of non-availability of concerned category candidates, if any, the vacant seats shall be offered to the eligible candidates under 40% quota and vice-versa.

xxx xxx xxx

15 to 17 xxx xxx xxx

18. Candidates securing at least 50% marks in the Common Entrance Test – PGET, 2007 shall be eligible for admission. However, for SC/BC candidates, the minimum eligibility marks for admission to reserved seats for the concerned category, shall be 40% instead of 50% in PGET-2007.

19. There shall be separate merit list for in-service 60% quota candidates for Medical/Dental Colleges and a separate merit list for those who are not covered under the category of in-service candidates. The merit list for open and reserve candidates shall be combined and reserve candidates will be eligible for open seats also, as per their merit, eligibility and option as the case may be.

20 to 36. xxx xxx xxx

> 37. The candidate who have passed their graduate degree from Medical/Dental Colleges situated in the State of Punjab except Christian Medical College/Christian Dental College, Ludhiana, and have qualified PGET-2007, shall be given additional 15% marks of the total marks obtained in Post Graudate Entrance Test (PGET 2007)."

Learned counsel for the petitioners referred to para 19 above and submitted that merit list for open and reserved candidates being combined, reserved candidates were eligible for open seats also.

Learned counsel for the respondent-University opposed this submission and submitted that the merit list may be combined and reserved candidates may be eligible for open seats also but this did not give them a right to be considered for the open seats by the same being treated as reserved. They are eligible for open seats "as per their merit" and not by way of reservation. He submitted that if a reserved candidate, performed on merit, he may be eligible, but he could not claim that open seats which remained vacant should be treated to be reserved for reserved candidates.

After considering the rival submissions, we find that there is no warrant for the interpretation sought to be placed by learned counsel for the petitioners. The scheme of notification is quite clear. Para 14(c)(i) clearly provides that vacant seats could be offered to eligible candidates under 40% quota and vice-versa. Para 19, in providing for combined merit list for open and reserved candidates and permitting reserved candidates to be eligible for open seats as per their merit,

does not make them eligible to claim that open seats be treated as reserved seats as sought to be contended on behalf of the petitioners.

We, therefore, do not find any merit in this petition.

The writ petition is dismissed.

(ADARSH KUMAR GOEL)
JUDGE

July 09, 2007 **(AJAI LAMBA)**
ashwani **JUDGE**